IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(227) **COMPANY PETITION NO. 557 OF 1999**

Deepak Industries Ltd. ... Petitioner

Vs.

BRIMCO Plastic Machinery ... Respondent

Mr. K.G.S. Gripathi for Petitioner.

None for Respondents.

CORAM : A.M. KHANWILKAR,J.
DATED : JULY 15, 2005

P.C.

. Heard counsel for the Petitioner. None appears for the respondents though served. No reply has been filed on behalf of the respondent.

. The case of the Petitioner is that they have sold and delivered goods to the respondent company on the requisition of the company. The goods have been accepted by the respondent company without any demur. At no point of time, the respondent has raised dispute with regard to the goods or short quantity of goods supplied. Inspite of repeated reminders, the respondent company failed to discharge its liability to pay the outstanding dues. As no payment was offered, the Petitioner eventually issued statutory notice to the respondent company on 15.6.1998. The liability to pay amount is acknowledged by the respondent in

their reply given on 20th June, 1998. The respondent company has also expressed their inability to pay the amount due to financial crisis. The outstanding amount payable to the Petitioner at the relevant time was around Rs.2,54,000/-. As no amount was received inspite of statutory notice, The Petitioenr eventually filed this petition under Section 433 and 434 of the Companies Act on 13.5.1999. No reply was filed by the respondent though served. As none appeared for respondent and no reply was filed petition came to be admitted on 13.12.2000. The admission of the Petition has been subsequently published in newspapers as well as official gazette. Inspite of notice respondent did not bother to file any reply to the present petition. During the pendency of this petition, Official Liquidator has been appointed as Provisional Liquidator by order dated 14.12.2001. During the pendency of this petition, secured creditor has filed affidavit supporting the petition. The claim of the secured creditors as on 1.10.1990 is stated to be around Rs.3.71 Crores. As mentioned earlier, inspite of notice none appears for the respondent or no reply has been filed, there is no material to rebut the legal presumption that the respondent company is unable to pay its debts to the Petitioner and claims of

the supporting creditors. If it is so, this court has no option but to allow this petition in terms of Prayer Clauses (a) and (b). Accordingly, petition made absolute in terms of Prayer Clauses (a) and (b).

(A.M. KHANWILKAR,J.)